

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DEVON BEAN,)	CASE NO.: 1:19-CV-01000
)	
Plaintiff,)	JUDGE JOHN R. ADAMS
)	
v.)	
)	CUYAHOGA COUNTY AND OFFICERS
COUNTY EXECUTIVE, et al.,)	SMITH AND MILLER'S ANSWER
)	
Defendants.)	(Jury demand endorsed herein)

Now come Defendants Cuyahoga County and Officers Brandon Smith and Marvin Miller, by and through counsel, and for their Answer to Plaintiff's Complaint submit the following:

1. Answering Paragraphs 1, 2, 3, 4, 5, 19, 20, 21, 22, 23, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 46, 47, 49, 52, 53, 60, 66, 69, 72, 76, 77, 78, 80, 81, 82, 83, 84, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, and 97 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

2. Answering Paragraphs 6, 7, 8, 10, 12, 14, 17, 18, 24, 25, 45, and 54 of Plaintiff's Complaint, Defendants admit the allegations contained therein.

3. Answering Paragraphs 9, 15, 16, 29, 48, 51, 55, 56, 57, 58, 59, 61, 62, 63, 64, 65, 67, 68, 70, 71, 73, 74, 99, 100, 103, 104, 105, 106, 107, 109, 110, 111, 112, 115, 116, 117, and 118 of Plaintiff's Complaint, Defendants are without sufficient information or belief to form an opinion as to the truth of the allegations contained therein and therefore deny the same.

4. Answering Paragraph 11 of Plaintiff's Complaint, Defendants deny that Defendant Mills was responsible for reviewing all use of force incidents. Defendants admit the remaining allegations contained in Paragraph 11 of Plaintiff's Complaint.

5. Answering Paragraph 13 of Plaintiff's Complaint, Defendant Officer Miller's first name is Marvin, not Maurice. Further, Officer Miller is not a SRT member. Defendants admit the remaining allegations in Paragraph 13 of Plaintiff's Complaint.

6. Answering Paragraph 44 of Plaintiff's Complaint, Defendants aver said Paragraph is rhetorical and does not require an answer by these Answering Defendants.

7. Answering Paragraph 50 of Plaintiff's Complaint, Defendants aver that the policy referenced does not specify who completes a "detailed report" regarding the use of chemical agents. Defendants admit the remaining allegations Paragraph 50 of Plaintiff's Complaint.

8. Answering Paragraphs 75, 79, 85, 98, 101, 108, and 113 of Plaintiff's Complaint, Defendants incorporate the preceding admissions, averments and denials as if rewritten herein.

9. Answering Paragraphs 102 and 114 of Plaintiff's Complaint, Defendants aver said Paragraphs are legal conclusions and these Defendants are not required to answer the same.

AFFIRMATIVE DEFENSES

10. Defendants reserve the right to add any additional Affirmative Defenses as the evidence and discovery so disclose.

11. Defendants are entitled to all immunities available under federal or state law, including, but not limited to, absolute and qualified immunity.

12. At all times hereto, Defendants acted reasonably and in good faith.

13. Plaintiff has failed to exhaust available administrative remedies under federal (including the PLRA) and Ohio law.

14. Plaintiff's Complaint fails to state a cause of action for which relief may be granted against these answering Defendants.

15. Defendants state that if Plaintiff sustained any damage or injury, such damage or injury was directly or proximately caused or contributed to by the negligence of persons, including the Plaintiff, other than these answering Defendants.

16. Plaintiff's injuries and/or damages, if any, were caused by a third party over whom Defendants had no control or duty to control.

17. Plaintiff has failed to mitigate damages.

18. Any and/or all damage or injury complained of was proximately caused by intervening and/or superseding acts of persons or entities.

19. Defendants assert that the damages are limited to Ohio Revised Code § 2744.05.

20. Defendants are entitled to all immunities and defenses under Ohio Revised Code Ch. 2744 and all applicable sections therein.

21. Plaintiff is not entitled to recover punitive damages, prejudgment interest or post-judgment interest, or attorney fees or costs from these answering Defendants based upon his claims.

22. Plaintiff's claim for punitive damages is barred by R.C. 2744.05.

23. Plaintiff is not entitled to equitable remedies from these answering Defendants based upon his claims.

WHEREFORE, having fully answered, Defendants pray that Plaintiff's Complaint be dismissed, and that they go hence without cost or delay.

Respectfully submitted,

MICHAEL C. O'MALLEY, Prosecuting
Attorney of Cuyahoga County, Ohio

/s/ Robert F. Cathcart

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Brendan Smith and Officer Marvin Miller

JURY DEMAND

Defendants Cuyahoga County, Ohio, Officer Brandon Smith and Officer Marvin Miller demand a trial by jury by the maximum number of jurors permitted by law for each claim and cause of action in the Complaint.

/s/ Robert F. Cathcart